

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING  
FORMER JUDGE ROBERT D.  
QUALL

DECISION AND ORDER IMPOSING  
PUBLIC ADMONISHMENT

This disciplinary matter concerns Robert D. Quail, formerly a judge of the Merced County Superior Court. Former Judge Quail, his counsel, James A. Murphy, Esq., and trial counsel for the commission, Jack Coyle, Esq., have stipulated to issuance of this public admonishment, as set forth separately in a Stipulation for Imposition of Public Admonishment. Pursuant to stipulation, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

Judge Robert D. Quail was elected to the Merced County Municipal Court in 1979, was elevated to the Merced County Superior Court in August 1998 through court unification, and retired from judicial office on April 30, 2007. His disciplinary record consists of an advisory letter in 1994 and a private admonishment in 2006, neither of which involved conduct similar to the present subject matter.

Since at least 1994, Judge Quail and his wife have been leading volunteer medical relief "missions" every two years or so to towns in Kenya and Tanzania, under the name Masaai-Migori Africa Medical Mission, Inc. Judge Quail is the

Mission director. "Teams" of about 30 people conduct medical clinics to treat diseases such as malaria, and distribute donated items such as eyeglasses and clothing. The trips also have an evangelical component; church services are conducted in various towns, Bibles are distributed, and travel arrangements are coordinated through a Christian pastor in Kenya. (Judge Quail is a member of the Merced Presbyterian Church.) Initially comprised of college students and others connected with Merced Christian organizations, the teams grew to include community members and on occasion people within the judicial system.

An auction is held to support the mission, in the spring before the trip. Auction attendance grew over the years to an estimated 400 people, and the event was moved from the Merced Presbyterian Church to a community center owned by the church. Donations are made by local businesses and individuals, with items ranging from hay to the use of vacation homes.

#### A. Solicitation of Auction Donations

Although canon 4C(d)(i) of the Code of Judicial Ethics provides that a judge may assist a non-profit organization of which he is a director in planning fond-raising, it prohibits personal participation in the solicitation of funds or other fond-raising activities (with the exception that a judge may publicly solicit funds for such an organization from other judges). Also, canon 4C(d)(iv) provides that a judge shall not permit the use of the prestige of his or her judicial office for fond-raising.

Judge Quail is the main organizer of the auction, and solicited auction donations in the following instances.

1. Judge Quail asked Commissioner Henry Jacobs generally if he could donate to the auction (either at a local gym or by phone at court, or both). Commissioner Jacobs, who became a commissioner in 2000, donated a gourmet picnic, and in one instance symphony tickets, for auctions in 2002-2006. While Commissioner Jacobs initiated the first donation, Judge Quail initiated

conversations about subsequent donations by asking something like "Are you still good for it?" (While canon 4C(d)(i) permits judges to solicit funds from other judges as an exception to the prohibition on personal involvement in fund-raising, the exception does not permit judges to solicit funds from commissioners or other subordinate judicial officers.)

2. Judge Quail asked Sheriff Pazin and Undersheriff Blake to donate to the auction, and as a result they donated lunches and air patrol rides in 2002-2006. The judge contacted them about donations, either by calling or asking when he happened to run into them (or judicial secretary Tisa Hyder also contacted them at the judge's direction).

3. In 2005, Judge Quail telephoned Deputy Public Defender Marjaneh Maroufi at her office, and asked if her father would donate a room at a Berkeley hotel he owned. Ms. Maroufi's father had made the same donation the previous year after Ms. Maroufi had initiated the idea.

4. Judge Quail asked local businessman Larry Stefani to donate cases of wine over a period of years, including 2004-2006, which he did.

5. Judge Quail asked local businessman Richard Vierra to donate a deer hunt, which he did in 2006.

6. Attorney Debbie Bennett and her husband owned season tickets to San Francisco Giants baseball games. Ms. Bennett routinely appeared before Judge Quail in Merced. From approximately 2000 through 2005, the judge asked Ms. Bennett to donate Giants tickets to the auction, which she did at least once. One request occurred in the courtroom while Ms. Bennett was asking for a continuance; the judge called her up to the bench, alone, and asked her whether she was going to donate Giants tickets.

Ms. Bennett complained to then Presiding Judge Frank Dougherty about Judge Quail's conduct. Before Judge Quail was transferred to Los Banos in September 2005, Presiding Judge Dougherty spoke to him in chambers and told him not to solicit attorneys for auction donations. Thereafter, Judge Quail asked

Ms. Bennett to come into chambers. He told her that somebody had "snitched me off about the auction, and asked if it was she. Ms. Bennett responded by asking the judge if he believed that she would do something like that. The judge said that it must have been another attorney, whose name he specified. The judge then again solicited Ms. Bennett for a donation of Giants tickets to the auction, stating, "Are you still going to get me those tickets?", or words to that effect.

7. From approximately 1996-2006, Judge Quail asked Merced attorney Logan McKechnie, who regularly appeared before him, to donate items to the Mission itself. Mr. McKechnie donated several thousand pairs of eyeglasses through the Lions Club with which Mr. McKechnie was involved. The judge also asked Mr. McKechnie to donate to the auction on a few occasions, which he declined to do.

8. Around 2003, Judge Quail had court interpreter Yolanda Garcia ask Deputy Sheriff John Strauss into chambers, then told Deputy Strauss that he wanted him to donate horses he owned for a ride for a group of people, and to transport the people to a specific place for the ride (Dinosaur Point) and provide them with a meal. When Deputy Strauss declined, saying that the horses were ranch horses not meant for casual riding, and that he did not have insurance, the judge persisted. When Deputy Strauss continued to decline, the judge asked him who else could do it, and Deputy Strauss gave him the names of two law enforcement officers who worked at the courthouse - Dan Gover and J.R. Antone. The judge then contacted both men and asked each of them to use horses they owned to donate rides, which they did.

9. Around 1999 or 2000, Judge Quail asked retired Marshal Earl Downey to see whether his sister, whom the judge knew had access to NFL memorabilia, could donate to the auction, which she agreed to do. For several years thereafter, the judge approached Marshal Downey and asked him to contact his sister and ask her to make a donation.

10. In connection with the 2006 auction, Judge Quail asked local farmer Bob McDonald (at a local "Sportsman's Club" dinner) whether he donated to good causes; when he said that he did, the judge told him that he was seeking donations for the auction. McDonald told the judge he would think about it, and then agreed to donate hay.

11. For two auctions held around 2000 and 2001, Judge Quail asked court administrator Lee Haugen to contact local golf courses and obtain donations of playing time.

B. Selling Auction Tickets/Having Others Sell Tickets

Judge Quail personally solicited attendance for the auction. The judge asked several people if they wanted to buy tickets, or if they knew anyone else who might want tickets. (Tickets cost a few dollars.) Judge Quail also directed others to sell auction tickets, including interpreter Yolanda Garcia, Undersheriff Blake and Marshal Downey.

C. Acting as Auctioneer

While the auctions were primarily conducted by a professional auctioneer, Judge Quail sometimes acted as auctioneer, at least in part, between approximately 1999 and 2005, auctioning off a few items himself. (See Cal. Judges Assoc, Judicial Ethics Update (1982) p. 1 [judge prohibited from participating as auctioneer on local public education television station for purpose of raising funds for operation of station], see Cal. Judges Assoc, Judicial Ethics Update (1989) p. 4 [if participation by judge is designed to increase donations, there is clearly implied indirect solicitation of funds by judge, which is inappropriate].)

D. Use of Judicial Secretary Tisa Hyder/Court Resources

Judge Quail used judicial secretary Tisa Hyder to create documents connected with the Africa trips and, in a few instances, pertaining to other

personal interests (father-son competitive tennis, Rescue Men's chorus, the "Quall-ity Inn," a cabin owned by the judge that he allows others to use). Hyder prepared about 60 such personal documents between 2001 and 2006, including letters directly related to fund-raising; it is estimated that she spent about 16 hours on the judge's personal work over that period.

A "judge may not use his or her office, staff, or public property and/or resources under the judges' control for personal, nongovernmental purposes. This is an obvious part of the obligation of a judge to 'act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.'" (Rothman, California Judicial Conduct Handbook (1999 2d ed.) §§ 3.33, 3.34-3.36.) The total amount of time spent during business hours was more than a de minimis nature that might be permissible (*id.*, § 3.36).

Sometime between late 2003 and mid-2004, in a brief conversation that occurred in passing, Presiding Judge Dougherty told Judge Quail that he was not to use the judicial secretary or court resources for the Africa trips; Judge Quail indicated he understood. Thereafter, Judge Quail curtailed, but did not totally cease the use of the judicial secretary; Ms. Hyder prepared about six Africa-related documents after the summer of 2004.

#### E. Use of Judicial Letterhead

Eleven of the letters prepared by Ms. Hyder described in the previous section were on judicial letterhead - eight concerning Africa (a fax to hotel regarding room reservations, three donation thank you notes, letter to embassy re travel arrangements, letter to travel agent re travel arrangements, letter re transmittal of Mission's statement of purpose, letter to team members re distributing brochures) and three concerning other personal interests of Judge Quail (obtaining admission to the U.S. for children of pastor in Africa who coordinated trips, getting Wimbledon tickets for Mission members stopping in London on the way home, and obtaining time off for someone to participate in a

concert by the Men's Rescue chorus, founded and directed by the judge). Most of the judicial letterhead documents were sent in 2001-2002.

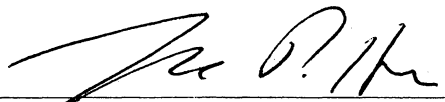
The use of court stationery related to the Africa trips advanced a personal interest as prohibited by canon 2B(2) (judge shall not lend prestige of judicial office to advance personal interests of judge or others). The Africa trips at a minimum advanced the personal interests of others (medical relief), including that of the Presbyterian church. And, the letters directly related to fund-raising are a violation of canon 4C(d)(iv) (judge shall not permit the use of the prestige of office for fund-raising). (See Rothman, *supra*, §§ 8.31-8.33.)

Judge Quail's actions, as set forth above in sections A-E, violate the Code of Judicial Ethics, canons 2 A, 2B, 4C(d)(i) and 4C(d)(iv), and constitute prejudicial misconduct.

Commission members Honorable Frederick P. Horn, Honorable Judith D. McConnell, Honorable Katherine Feinstein, Mr. Peter E. Flores, Jr., Mr. Marshall B. Grossman, Mr. Samuel A. Hardage, Ms. Barbara Schraeger, Mr. Lawrence Simi, Ms. Sandra Talcott and Mr. Nathaniel Trives voted to impose a public admonishment. Commission member Ms. Maya Dillard Smith did not participate.

Dated:

6/2/08<sup>th</sup>



Honorable Frederick P. Horn,  
Chairperson of the Commission on  
Judicial Performance

## **PROOF OF SERVICE**

I, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. My business address is 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102. I declare as follows:

On June 4, 2008, I served the attached:

### **DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT**

#### **In the Matter Concerning Former Judge Robert D. Quail**

on all interested parties in this matter, by delivering a true copy as follows:

☒ (BY U.S. MAIL) I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service, that this mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.

☐ (BY PERSONAL DELIVERY) I placed the original or a true copy thereof enclosed in a sealed envelope and delivered such envelope by hand to the office of the addressee.

*M* (BY FACSIMILE TRANSMISSION) I caused such document to be transmitted to the addressee's facsimile number noted. The facsimile machine I used complied with Rule 2.301(3) and the transmission was reported as complete and without error. Pursuant to Rule 2.301(6), I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration as required by Rule 2.306(g)(4).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on June 4, 2008 at San Francisco, California.



**SERVICE LIST****DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT****In the Matter Concerning Former Judge Robert D. Quail****Via U.S. Mail and Facsimile**

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